ORIGINAL
FILE

RECEIVED

APR 2 1 1992

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Amendment of Rules Governing	)	CC Docket No. 92-26
Procedures to be Followed When	)	
Formal Complaints are Filed	)	
Against Common Carriers	)	

COMMENTS OF
THE GTE TELEPHONE COMPANIES

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE") submit these comments with regard to changes proposed to the formal complaint procedures in the Notice of Proposed Rulemaking, FCC 92-59, released March 12, 1992 ("Notice") in the above-captioned proceeding.

The Commission's stated goal in this rulemaking is "to facilitate timelier resolution of formal complaints by eliminating procedures and pleading requirements that have caused unintended and unnecessary delays." (Notice at ¶1.) GTE generally supports changes that will expedite and streamline procedures both for the parties and the Commission. However, GTE is concerned that such streamlining not impair the rights of the parties in these contested proceedings. As with any adjudicative proceeding, the Commission must assure that fairness and due process are preserved. GTE submits the following comments:

Pleadings

The Notice (at ¶8) proposes to shorten the time for filing an answer from 30 to 20 days -- a 10 day reduction. It has been GTE's experience, however, that the full 30 days currently allowed for preparing an answer is needed to investigate the allegations of the complaint, to engage in settlement discussions, to informally resolve the matter with the Complainant or to prepare an answer. While the Notice refers to a similar 20-day time limit for filing answers in the Federal Rules, extensions are frequently requested and granted by the courts, suggesting that 20 days is often insufficient to prepare a proper answer.

As the Commission notes, formal complaints are ordinarily resolved solely on the basis of the written pleadings. In that the answer may be the defendant's only opportunity to present its position, it is imperative that the defendant be given sufficient opportunity to prepare its answer. Even though the Commission is trying to expedite the complaint process, the 10 days saved balanced against the defendant's right to present a proper defense does not appear justified or necessary. Therefore, GTE suggests that the time for filing an answer remain at 30 days.

The Notice (at ¶11) proposes to require that a defendant's motion for dismissal or summary judgment be filed with the answer, unless it is based upon information later discovered. Motions to dismiss or motions for summary judgment often present the Commission an opportunity to resolve or partially resolve the complaint without a full proceeding. In the past, although the rules have anticipated these motions, it has been GTE's experience that the Commission rarely acts on these motions until the final order on the merits.

GTE suggests that rather than limiting these motions as proposed, the Commission should encourage the filing of motions to resolve all or part of the

complaint and should act on those motions expeditiously. Even a partial dismissal or summary judgment can assist in focusing the parties on settling the remaining issues and can assist the Commission in deciding the remaining issues. The proper filing and timely resolution of motions would expedite the overall complaint process.

The proposal that motions for summary judgment be filed with the answer or be accompanied by an explanation unnecessarily burdens this process. A motion to dismiss would normally be filed if the motion is based solely on information contained in the complaint. In most cases, some discovery would be necessary to support a motion for summary judgment. It is, therefore, burdensome to require the party to identify and explain the information obtained in discovery necessary for the motion for summary judgment filed after the answer. Rather than burdening this process, the Commission should encourage the filing of these motions to encourage parties to limit and focus the issues in dispute. Thus, a motion for summary judgment should be permitted without a time limitation.

Discovery

The Notice (at ¶15) proposes to preclude objections to discovery based upon relevance. Under this proposal, if a party refuses to answer an interrogatory or bases an objection upon relevance, it "would be deemed an admission of allegations contained in the interrogatory." This proposal would hamper, not facilitate, discovery.

First, limiting objections based upon relevance would invite "fishing expeditions" and other abuses that the relevance objection was designed to protect against. Relevance is a standard long-embodied in the Federal Rules and should be maintained by the Commission.

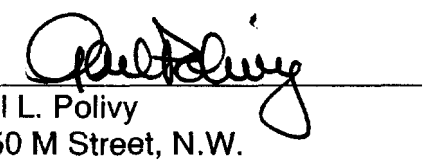
Second, the remedy proposed, an admission, is totally inappropriate. By stating that a refusal to answer or a relevance objection would be "an admission of the allegations," the proposal suggests that interrogatories are statements of facts. However, interrogatories are usually in the form of questions or requests for information in the possession of the other party, not statements of facts. If the rule were to be applied, it would be difficult to determine what allegations of fact are contained in a particular interrogatory, either explicitly or implicitly, and what should be admitted. It is likely that this process would cause more problems than it would alleviate and would be unworkable. Therefore, GTE suggests that the Commission maintain the current rule which permits the relevance objection.

GTE supports the proposal (Notice at ¶14) to resolve discovery objections at a status conference. Even before Commission intervention is required, discovery disputes can often be resolved informally by the parties, especially if the parties are encouraged to do so. GTE suggests that the Commission place greater reliance on informal dispute resolution, such as procedures used in some state administrative proceedings. For example, in proceedings before the Texas PUC, the Administrative Law Judge requires a party to engage in an informal discovery conference with the party resisting discovery in a good faith effort to resolve or narrow the dispute before the party seeking discovery may file a motion to compel. It has been GTE's experience that many discovery disputes can be worked out over the phone between the parties. Any motion to compel must affirmatively state that the moving party has conferred with counsel for the party resisting discovery in an effort to settle any outstanding discovery disputes. GTE suggests that the Commission incorporate a similar process in the rules to encourage informal discovery resolution prior to a motion to compel or a Commission-mandated status conference

Finally, the Notice (at ¶13) proposes bifurcating discovery so that no discovery regarding damages would be permitted until after a finding of liability. While GTE agrees that in some cases it may not be fruitful to engage in extensive discovery pertaining to damages until after a finding of liability, some damages discovery is often helpful at the start of a case in order to properly assess what the case is worth. This initial damages discovery may also aid the parties in settling their disagreements. Thus, GTE suggests that discovery on damages not be precluded initially. If, after a finding of liability, further discovery is necessary, the Commission staff should have the discretion to grant additional limited discovery.

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

By 

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

April 21, 1992

THEIR ATTORNEY